REMARKS

Reconsideration and withdrawal of the rejections of this application, and, if necessary, an early interview with the Examiner, are respectfully requested in view of the remarks herein. The Examiner is thanked for reconsidering the required election of species and broadening the searched species.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1, 5, 6, 10, 13 and 19 are pending. Claims 1, 10, 13 and 19 have been amended, and claims 2-4, 7-9, 11, 12 and 15-18 have been cancelled, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims are in full compliance with the requirements of 35 U.S.C. §112. The additions to the claim and the remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. THE CLAIM OF PRIORITY TO FR 98 04409 HAS BEEN PERFECTED

The Office Action states that the certified copy of FR 98 04409 was required to substantiate the claim of priority, although the Patent Office is already in receipt of a certified English translation of the document.

Accompanying this paper is a document forwarding a certified copy of FR 98 04409, such that Applicants verily believe the priority claim has now been perfected.

III. THE ART REJECTIONS ARE OVERCOME

Claims 1, 2, 4, 10, 11, and 12 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Ross (U.S. Patent No. 6,444,799). The rejection is respectfully traversed.

As described above, the certified copy of the French priority application is believed to have perfected Applicants claim of priority, entitling Applicants to a filing date of April 3, 1998,

which is prior to the filing of Ross. Accordingly, Ross is not a proper 102 reference, and the rejection is therefore improper. Consequently, reconsideration and withdrawal of the rejection under 35 U.S.C. §102(e) is respectfully requested.

Claims 1-19 were also rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Davis (U.S. 2002/0164341), Olsen (US 2001/0007860) or Crabb (U.S. 5,922,237) taken with any of Miles, Inc. (EP 0 532 833 A1), Lowell (WO 95/11700), Chavez, Gicquel (US 2001/0024653) or Wasmoen (US 5,989,562). The rejection is respectfully traversed.

Again, it is well-settled that there must be some prior art teaching which would have provided the necessary incentive or motivation for modifying the reference teachings. *In re Laskowski*, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989); *In re Obukowitz*, 27 U.S.P.Q. 2d 1063 (BOPAI 1993). Further, "obvious to try" is not the standard under 35 U.S.C. §103. *In re Fine,* 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). And, as stated by the Court in *In re Fritch*, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992): "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification." Also, the Examiner is respectfully reminded that for the Section 103 rejection to be proper, **both the suggestion of the claimed invention and the expectation of success must be founded in the prior art, and not Applicants' disclosure**. *In re Dow*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988).

The Office Action states that the data submitted with the January 23, 2004 would be effective in overcoming the §103 rejection with respect to the specific plasmid vector described therein if the data was submitted in the form of a Declaration.

Accordingly, submitted herewith is a Declaration by the first named inventor, Dr. Jean-Christophe Audonnet (unexecuted, signed copy to follow), in which Dr. Audonnet declares that the experiment showing the superiority of a DNA vaccine comprising an antigen of rhinopheumonia virus and carbopol when tested against a DNA vaccine that lacks carbopol was performed under his direction, supervision and control in the ordinary course of business. Furthermore, as shown in the data accompanying the Declaration as Exhibit 2, the results from EHV-1 indicate that the general trend was that animals vaccinated with naked DNA and Carbopol® had higher levels of neutralizing antibodies and lower virus excretion than those vaccinated with naked DNA only. And, animals vaccinated with naked DNA and Carbopol®

had a lower percentage of positive viral isolation by the end of the 21 day period. Additionally, Dr. Audonnet declares that a lowering of the virus excretion levels is especially important in animals such as equines that are stabled together and graze together, thereby having a greater chance of being exposed to EHV by the nasal droplets or mucus of an infected equine.

Applicants respectfully withdraw the data and statements made regarding porcines in the Response filed January 23, 2004. Furthermore, at this time the claims are directed only to equines.

As shown in the accompanying Declaration, and as declared by Dr. Audonnet, the addition of Carbopol® to the naked DNA vaccine provides enhanced results that are not evident, and would not be inferred, from any of the documents cited in the Office Action.

As the documents cited in the Office Action do not teach or suggest that an incorporation of Carbopol® as an adjuvant in a naked DNA vaccine composition will enhance its vaccination effect, the Section 103 rejections cannot stand.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. §103 are respectfully requested.

REQUEST FOR INTERVIEW

If any issue remains as an impediment to allowance, prior to issuance of any paper other than a Notice of Allowance, an interview is respectfully requested; and, the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

In view of the amendments, remarks and documents herewith, Applicants have addressed and overcome all rejections of the application set forth in the Office Action, and the present application is in condition for allowance.

Thus, early and favorable reconsideration and withdrawal of the rejections of the application as set forth in the Office Action, and, prompt issuance of a Notice of Allowance, or an interview with supervisory review, at an early date, with a view towards reaching agreement on allowable subject matter, are earnestly solicited.

Respectfully submitted,

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